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10/585,142	06/08/2007	Simon Tullett	1000035-000072	9941

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EXAMINER

EDWARDS, LAURA ESTELLE

ART UNIT	PAPER NUMBER
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1713

NOTIFICATION DATE	DELIVERY MODE
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07/23/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/585,142	Applicant(s) TULLETT ET AL.	
	Examiner Laura Edwards	Art Unit 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 82-162 is/are pending in the application.
- 4a) Of the above claim(s) 114-162 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 82-88, 90-92, 98, and 113 is/are rejected.
- 7) ☒ Claim(s) 89,93-97 and 99-112 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/30/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2006-0630; 20070213; 20070425</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election with traverse of Group I, claims 82-113 in the reply filed on 4/26/2010 is acknowledged. The traversal is on the ground(s) based on reasoning given in the response filed January 16, 2006, which is incorporated by reference which allegedly has not been rebutted, for the secondary reasoning that nowhere has the Office provided a citation to any authority for asserting that the existence of a piece of prior art that allegedly discloses that the "special technical feature" of Applicants' claims exactly corresponds to what is allegedly shown in the art justifies ignoring the requirements of PCT Rule 13.1 and 13.2, thirdly, the Office has focused on what it considers to be the "special technical feature" in a vacuum, has narrowly defined this alleged special technical feature," and has then alleged that this narrow feature is shown in the art, as a mechanism to circumvent the requirements of PCT 13.1 and 13.2. However, nothing in 37 C.F.R. § 1.475(a) justifies such an approach. Applicants submit that this approach is improper, and that the restriction requirement should be withdrawn.

Acknowledgement is made of all above contentions which are well taken; however, Applicants must be aware that the lack of unity requirement has been made in good faith. Due to the multitude and/or variety in inventions claimed and in light of substantially limited examination time, examination of all of the inventions together would place a tremendous undue burden on the Examiner for this case. The burden of the Examiner to set forth the special technical feature and that such a feature is known or established in the art has been fulfilled as evidenced by the teachings to Hallett (UK 2402895) wherein an apparatus is provided for a continuous path of platens on which substrates are electrostatically coated. Because this burden

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appears to have been met, the lack of unity requirement is deemed reasonable and fully responsive to all above arguments.

Thus, the requirement is still deemed proper and is therefore made FINAL.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 82 and 83 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 151, 152, and 155 of copending Application No. 10/571909. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the present application, 10/585142 and application 10/571909 claims the same inventive concept to a plurality of platens arranged to move along a path, each platen being arranged to hold a plurality of substrates; driving means or a conveyor for driving the platens along the path; and an applicator assembly for applying the powder material to the substrates.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Specification

The abstract of the disclosure is objected to because it should be on a single clean sheet in proper form. Correction is required. See MPEP § 608.01(b).

35 USC § 112, Sixth Paragraph

Acknowledgement is made at least of claims 82 and 83 which respectively include means plus function limitation(s) which do not invoke 35 U.S.C. 112, sixth paragraph because each

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claim describes the structure supporting the claimed function such as "driving means" which drives or moves the platens as well as "charging means" which provides electric charge to effect electrostatically charged powder coating material.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 82-89, 90, 92, 94, 98, and 113 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Hallett (GB 2402895).

Hallett provides a plurality of platens (201) arranged to move along an endless path, each platen being arranged to hold a plurality of substrates (101); driving means or a conveyor (not numbered) for driving the platens along the endless path; and an applicator assembly (501) for applying the powder material to the substrates, the applicator assembly being located on a part of the endless path (see abstract as well as pages 27+).

The following rejection is being made under Ando (WO 03/002348) which is not in English, however, an English translation/equivalent thereto can be found in US 7,080,597. The US document can be used to follow the basis of the rejection.

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Claims 82-88, 90, 98, and 113 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando (WO 03/002348).

Ando provides an apparatus for electrostatically applying powder to substrates/objects comprising a plurality of platens or pallets (50) arranged to move along a conveyed path which can be construed as endless path, each pallet being arranged to hold a plurality of substrates (1); driving means or a conveyor (208) for driving the platens along the path; and an applicator assembly (110) for applying the powder material to the substrates, the applicator assembly being located on a part of the path.

With respect to claim 83, the powder to be applied to each object can be electrostatically charged.

With respect to claim 84, different powders can be applied to each object such that inherently when the powder runs out, a new replacement powder can be used, thus the supply is replaceable.

With respect to claims 85 and 86, there is the provision for a fixing device (310) which is a high heating device that can include heating fins which would define a fusing assembly.

With respect to claim 87, pallets can be loaded or place on mounting stage (20).

With respect to claim 88, following fusing or fixing of the powder on each object, the object is finished processing thus the fusing station or area of the apparatus would provide for an unloading area for the finished product.

With respect to claim 90, sensors (226 or 228) are used to monitor/inspect the objects supported in the pallets and thus at least one detector is provided for inspecting the pallets having the objects thereon.

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With respect to claim 98, because the path of travel is does not rise or lower, the processing path is deemed horizontal.

With respect to claim 113, plural pallets are fixed to move along the horizontal path as shown in the drawings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 91 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando (WO 03/002348).

The teachings of Ando have been mentioned above but Ando is silent concerning the detector being in the form of fiber optics or a camera. However, because Ando is sensing or detecting aspects of the objects on the pallet, it would have been within the purview of one

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skilled in the art to use a suitable detector in optical form to provide for a clean non-contacting detection since food products can be processed in the apparatus.

Allowable Subject Matter

Claims 89, 93-97, and 99-112 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The following patent discloses the state of the art with respect to a powder coating system for an article using an endless conveyor arrangement: Yamamoto et al (US 4,811,689).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Norton can be reached on (571) 272-1465. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura Edwards/
Primary Examiner
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July 18, 2010